

HERZFELD & RUBIN, P.C.  
 JEFFREY L. CHASE (*pro hac vice*)  
*jchase@herzfeld-rubin.com*  
 MICHAEL GALLUB (*pro hac vice*)  
*mgallub@herzfeld-rubin.com*  
 MARK A. WEISSMAN (*pro hac vice*)  
*mweissman@herzfeld-rubin.com*  
 125 Broad Street  
 New York, New York 10004  
 Telephone: (212) 471-8500  
 Facsimile: (212) 344-3333  
*Attorneys for Defendant Volkswagen Group of America, Inc.*

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

IN RE: VOLKSWAGEN “CLEAN DIESEL”  
 MARKETING, SALES PRACTICES, AND PRODUCTS  
 LIABILITY LITIGATION

Case No. 3:15-MD-02672-CRB

THIS DOCUMENT RELATES TO: ALL ACTIONS

**STATUS REPORT OF  
 PENDING LITIGATION**

Hearing: December 22, 2015  
 Time: 8:00 am  
 Courtroom: 6

The Honorable Charles R. Breyer

**STATUS REPORT OF PENDING LITIGATION  
BY DEFENDANT VOLKSWAGEN GROUP OF AMERICA, INC.**

In accordance with this Court’s Pretrial Order No. 1, dated December 9, 2015, Defendant Volkswagen Group of America, Inc. (“VWGoA”), through its counsel, Herzfeld & Rubin, P.C., hereby submits this report to advise the Court as to the status of all litigation pending in this MDL matter.

**Introduction**

VWGoA recognizes that this complex litigation raises issues of substantial public importance. VWGoA, Volkswagen AG (“VWAG”), Audi AG and other company affiliates within the Volkswagen Group have been responding to regulatory inquiries in both the United States and countries around the world. More specifically for these proceedings, defendants have been working diligently with the United States Environmental Protection Agency (“EPA”) and

1 the California Air Resources Board (“CARB”) to develop a technical solution to bring the  
2 involved vehicles into emissions compliance. Despite the compliance issues, the EPA noted in  
3 its September 18, 2015 press release that the vehicles remain both safe to drive and legal to  
4 drive.

5 We anticipate that this MDL will have at least several phases, including: (i) the initial  
6 phase, as the Court organizes the various litigations before it, including appointing a Plaintiffs’  
7 Steering Committee to conduct and coordinate the pretrial stage of this litigation, (ii) the filing of  
8 one or more consolidated amended complaints; (iii) the briefing, argument and decision on  
9 defendants’ initial dispositive motions; and (iv) discovery. It is respectfully requested that  
10 discovery in these cases not be served by the parties until an appropriate protective order is  
11 approved by the Court. There will be confidentiality and personal data protection concerns  
12 under relevant German and European (EU) law. The German Constitution and European  
13 Convention of Human Rights (ECHR) both protect the right of privacy with regard to personal  
14 data. Discovery in this case will implicate and, in certain respects, be subject to personal data  
15 protection laws which will require consultation with lead plaintiff counsel at an appropriate time.  
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### 18 **Procedural Status**

19 On December 8, 2015, the Judicial Panel of Multidistrict Litigation (JPML) issued a  
20 Transfer Order in MDL-2672 transferring 63 cases to this Court pursuant to 28 U.S.C. 1407  
21 (2016). As of the date of the Transfer Order, there were a total of 515 cases noticed as “Related  
22 Actions” pending in the MDL. On December 10, 2015, the Panel issued nine (9) Conditional  
23 Transfer Orders (CTO’s) which conditionally transferred an additional 421 pending MDL cases  
24 to this Court.<sup>1</sup> Per each of these CTOs, the transmittal of the CTO to the clerk of this Court is  
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27 <sup>1</sup> The CTOs did not include cases that are pending in the Northern District of California, which  
28 cases will be transferred to Your Honor pursuant to Pretrial Order No. 1. Some cases in the

1 stayed until December 17, 2015 pending the filing of any Notices of Opposition to Transfer.<sup>2</sup>  
 2 For the Court's convenience, a copy of the initial Transfer Order and nine Conditional Transfer  
 3 Orders are attached as Exhibit A.

4 The numerous federal actions in this MDL, or soon to be transferred into this MDL,  
 5 consist of cases filed by consumers and businesses, both individually and on behalf of putative  
 6 national classes and statewide sub-classes, from 69 jurisdictions throughout the United States.<sup>3</sup>  
 7 All cases in the MDL relate to the September 18, 2015 and, in many cases, the November 2,  
 8 2015, EPA Notices of Violation ("NOVs") to VWGoA, Volkswagen AG ("VWAG"), Audi AG  
 9 and Porsche Cars North America, Inc. ("Porsche") from the EPA and CARB. The NOVs relate  
 10 to emissions compliance matters, specifically the alleged installation of "defeat device" engine  
 11 emissions control software affecting certain vehicles equipped with 2.0 and 3.0 Liter Diesel  
 12 engines, sold in the U.S. during certain model years. Each of the complaints in these actions  
 13 track the substance of the NOVs and seek essentially similar relief on behalf of the same or  
 14 overlapping putative class members consisting of owners or lessees of the subject vehicles.  
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16 The plaintiffs' claims in these actions generally seek damages and equitable relief against  
 17 VWGoA, VWAG, Audi AG and Porsche, their corporate affiliates, and other third parties, under  
 18 various state consumer protection laws, state warranty statutes and state common law theories of  
 19

20 MDL were also apparently dismissed prior to the transfer and conditional transfer orders. Four  
 21 cases that were also tagged in the Porsche "Clean Diesel" JPML transfer proceeding (MDL-  
 22 2683) also were not included in the CTOs. Since the transfer and conditional transfer orders,  
 23 Plaintiffs have filed additional cases directly in the Northern District of California. Counsel has  
 24 been advised by one plaintiffs' attorney, Robert Hilliard, that he intends to file 4,000 additional  
 25 cases directly in this MDL. These cases have not been commenced to our knowledge.

26 <sup>2</sup> To date, we are aware of six (6) Notices of Opposition to Conditional Transfer filed by  
 27 plaintiffs with the JPML objecting to transfer of the following cases: *Stone*, S.D. Ohio, 1:15-cv-  
 28 00686, *Ballew*, D. Mt., 9:15-cv-00133, *Adams*, E.D. Ky., 2:15-cv-00184, *Burke-Williams*, S.D.  
 Ohio, 1:15-cv-00702, *Bynum* W.D. Ky., 3:15-cv-00810, and *Shelton*, S.D. Ohio, 1:15-cv-00733.

<sup>3</sup> Of these cases, 480 are putative class actions (excluding securities cases) and 29 are on behalf  
 of individual plaintiffs.

1 breach of contract, fraud and unjust enrichment. Some of the cases also allege claims under  
2 federal statutes including the Magnuson–Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* and the  
3 Civil Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961 *et seq.*<sup>4</sup>

4 The vast majority of pending cases in this MDL, or cases expected to be transferred, have  
5 been either stayed by the original court, pending the JPML decision, or the time for defendant to  
6 respond has been extended. VWGoA and its affiliated companies have not filed an Answer or  
7 dispositive motion in any of the MDL cases. An appendix is annexed below containing an  
8 overview of the MDL cases.

9  
10 Notwithstanding stays or time extensions, some district courts have been active in  
11 consolidating cases, attempting to promote early settlement discussions, and issuing evidence  
12 preservation orders. Under the supervision of Hon. Judge Gerald E. Rosen in Eastern District of  
13 Michigan and Hon. Judge Jose L. Linares in the District of New Jersey, the parties had consented  
14 to a mediation process in which preliminary matters were discussed. Both courts had appointed  
15 Hon. Judge Layn Phillips (Ret.) as a mediator. No substantive settlement discussions were held.

16  
17 As noted further below, evidence-preservation orders were entered in the Eastern District  
18 of Michigan, the District of New Jersey, the District of Virginia, and the Southern District of  
19 New York and a stipulated order was filed in the Western District of Wisconsin. Per this Court's  
20 Pretrial Order No. 1, a description of the steps Defendants have taken to preserve relevant  
21 evidence, including electronically stored information is set forth separately below.<sup>5</sup> There are  
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23 <sup>4</sup> A discrete group of cases conditionally transferred to this MDL also seek relief under the  
24 federal securities laws. Sullivan & Cromwell is representing defendants in these securities cases.  
25 Because the securities actions raise unique procedural, factual and substantive considerations,  
26 defendants intend to ask the Court to place these actions on a separate track for motion practice  
27 and discovery.

28 <sup>5</sup> In the Eastern District of Virginia, by prior order of Judge O'Grady, the parties had exchanged  
some preliminary discovery requests and were directed not to respond but to serve objections by  
December 14, 2015. However, based upon the conditional transfer of cases from that district,

1 several cases throughout the various jurisdictions where motions are pending, including motions  
2 to remand, with respect to removed cases, and motions for preservation of evidence.

3 In addition to VWGoA, the undersigned will represent Volkswagen AG in the following  
4 consumer actions subject to CTOs in which service of process was effected under the Hague  
5 Service Convention: *Gurevich*, E.D. Mich. No. 15-cv-13389, *Mizak*, D. Conn., No. 15-cv-  
6 01429, *Pawelko*, N.D. Ill. No. 15-cv-08562 and *Turnau*, D. Vt. 15-cv-214. Additionally, the  
7 undersigned will represent Audi AG in *Tanghetti*, E.D. Ca., 15-cv-2028, in which service of  
8 process was effected under the Hague Service Convention.

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10 The undersigned also appears as counsel for defendant Michael Horn, CEO of VWGoA,  
11 in the following consumer MDL actions: *Hoag*, S.D. Cal., 15-cv-2367, *King*, E.D. Mich., 15-cv-  
12 13950, *McMillen*, C.D. Cal., 15-cv-7615, *Siewart*, M.D. Fl., 15-cv-1728.

#### 13 **Pending Litigation in State Court**

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15 In addition to the federal actions, there are approximately 115 related actions currently  
16 pending in state courts throughout the country, both individual and putative class actions. In  
17 Texas and other states, there are procedures for statewide multidistrict litigation similar to the  
18 federal procedures including coordination of pleadings and discovery. In Texas, a motion has  
19 been made for statewide MDL treatment. The Texas MDL tribunal stayed the state MDL cases  
20 pending a ruling on the motion. If and when appropriate, VWGoA will consider taking similar  
21 steps in jurisdictions where such procedures are available. To the extent such statewide MDL  
22 procedures allow for coordination with this Court's scheduling, such coordination will  
23 undoubtedly enhance efficiencies, including avoiding duplication, in these litigations.

#### 24 **U.S. Regulatory Investigations**

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26 As noted, this matter is also under active investigation by the EPA, with which VWGoA  
27 Judge O'Grady vacated that deadline.

1 and VWAG have had numerous meetings with respect to a proposed remedy. In addition, this  
2 matter is also the subject of investigations by the U.S. Federal Trade Commission, the  
3 Department of Justice, other federal agencies and congressional committees. This matter is also  
4 the subject of investigations by a coordinated group of 47 state attorneys general and individual  
5 state attorneys general in California, Texas and West Virginia, respectively. Defendants have  
6 participated in numerous telephone calls and meetings with the 47-member multistate attorneys-  
7 general group to keep them advised of efforts to develop a technical solution and to deal with  
8 other concerns of the state attorneys general.  
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#### 10 **Statement as to Preservation of Evidence**

11 Defendants have taken the following steps to preserve evidence. Since August 31, 2015,  
12 Defendants, as part of the emissions-related investigations and proceedings, have been taking  
13 reasonable steps to preserve evidence in electronic or other form that they reasonably and in  
14 good faith believe may be relevant to the issues. Multiple legal-hold notices have been issued  
15 during this time period. The legal hold notices cover the proscriptions included in the  
16 preservation orders entered in the Eastern District of Michigan, District of New Jersey, Southern  
17 District of New York, Western District of Wisconsin, and Eastern District of Virginia. Copies of  
18 these preservation orders are attached as Exhibit B for the Court's convenience. Hundreds of  
19 employees at defendant companies have received the legal-hold notices. Individuals likely to  
20 have relevant information have been and are being interviewed and relevant documents and  
21 electronically stored information from these individuals are being secured. Likewise, non-  
22 custodial sources of documents and electronically stored information that are likely to contain  
23 relevant information are being identified and secured. Defendants have also taken steps to  
24 suspend the operation of document retention policies and IT procedures that could result in the  
25 deletion of relevant documents and electronically stored information.  
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1 Dated: New York, New York  
2 December 16, 2015

3 Respectfully submitted,

4 HERZFELD & RUBIN, P.C.  
5 *Attorneys for Defendant Volkswagen Group*  
6 *of America, Inc.*

7 By: /s/ Jeffrey L. Chase  
8 Jeffrey L. Chase (PHV)  
9 Michael Gallub (PHV)  
10 Mark A. Weissman (PHV)

11 125 Broad Street  
12 New York, New York 10004  
13 t: (212) 471-8500  
14 f: (212) 344-3333  
15 jchase@herzfeld-rubin.com  
16 mgallub@herzfeld-rubin.com  
17 mweissman@herzfeld-rubin.com



**APPENDIX****Overview of Consumer<sup>6</sup> MDL Cases**

<b>District Court</b>	<b>Cases</b>	<b>Status Summary</b>
Alabama Northern	12	Cases stayed or time to respond extended.
Alabama Southern	2	Cases stayed or time to respond extended.
Arizona	2	Cases stayed.
Arkansas Eastern	2	Cases stayed or time to respond extended.
Arkansas Western	2	Cases stayed or time to respond extended.
California Central	57	Cases stayed.
California Eastern	5	Cases stayed or time to respond extended.
California Northern	30 <sup>7</sup>	Cases consolidated and stayed.
California Southern	8	Cases consolidated and stayed.
Colorado	2	Cases stayed.
Connecticut	2	Cases stayed or time to respond extended.
District of Columbia	5	One case stayed. No service of process in remaining cases.
Florida Middle	14	Cases stayed or time to respond extended except in one case ( <i>DeRochemont</i> ) where motions to stay and to remand are pending.
Florida Northern	3	Cases stayed or time to respond extended.
Florida Southern	10	Cases stayed or time to respond extended.
Georgia Middle	2	Cases stayed or time to respond extended.
Georgia Northern	9	Cases stayed or time to respond extended except as to motion to amend complaint in <i>Silverman</i> . Cases naming Porsche not presently subject to CTOs.
Georgia Southern	1	Cases stayed or time to respond extended.
Hawaii	1	Case stayed.
Illinois Central	1	Motion for stay pending.
Illinois Northern	19	Cases served have been stayed or time to respond extended, or motions pending for same.
Illinois Southern	5	Cases served have been stayed.
Indiana Southern	2	One case stayed. Response to complaint due in

<sup>6</sup> In addition, there are a total of five securities cases in this MDL: one (1) case from the Eastern District of Virginia, two (2) cases from District of New Jersey, one (1) from Eastern District of Michigan and one (1) from Eastern District of Tennessee.

<sup>7</sup> As noted, additional related cases have been filed directly in the Northern District of California subsequent to the JPML transfer and conditional transfer orders.

1			<i>Roebuck</i> by January 5.
2	Iowa Southern	2	One case stayed, one case motion for stay pending.
3	Kansas	2	Cases stayed.
4	Kentucky Eastern	2	Remand motion pending in one case, no service of process in other case.
5	Kentucky Western	3	Remand motion pending in one case, no service of process in the other.
6	Louisiana Eastern	4	Cases stayed or extensions of time to extend granted.
7	Louisiana Middle	1	Motion to remand pending.
8	Maine	2	Cases stayed. Status report due January 20, 2016.
9	Maryland	7	Cases stayed.
10	Massachusetts	8	Cases served have been stayed or time to respond extended.
11	Michigan Eastern	58	There is a preservation of evidence stipulation and order in effect. There have been no answers filed or due given the informal stay on pleadings. The court appointed two mediators. There is a stipulation and order in effect concerning VW's goodwill program.
14	Minnesota	3	Cases stayed or time to respond extended.
15	Mississippi Southern	1	Case stayed.
16	Missouri Eastern	5	All served cases stayed, extended or so moved, motion for remand pending in <i>Roe</i> .
17	Missouri Western	10	All served cases stayed or time to respond extended. Motion for remand pending in <i>Autoport</i> .
18	Montana	2	Consumer case against VWGoA stayed. (Other case is against Volkswagen Credit Inc. subject to transfer objection)
20	Nevada	1	Time to respond extended.
21	New Hampshire	3	Cases served have been stayed.
22	New Jersey	70	Cases consolidated and answer deadline stayed. A stipulated document preservation order was entered. Court had appointed mediators for expedited settlement negotiations.
24	New Mexico	3	Two cases stayed. In one case ( <i>Ross</i> ), motion for stay and preservation order pending.
25	New York Eastern	7	Cases served have been stayed or time to respond extended.
26	New York Southern	5	Cases consolidated and time to respond extended. Evidence preservation order entered.
27	North Carolina Middle	3	Cases stayed or time to respond extended.
28	North Carolina Western	2	Cases stayed or time to respond extended.

1	Ohio Northern	4	Cases served have been stayed.
2	Ohio Southern	7	Cases served have been stayed.
3	Oklahoma Northern	2	Cases stayed or time to respond extended, remand motion pending in <i>Dunham</i>
4	Oklahoma Western	3	Cases served have been stayed or time to respond extended.
5	Oregon	2	No service of process. No court action.
6	Pennsylvania Eastern	8	Cases that have been served have been stayed.
7	Pennsylvania Middle	3	Cases that have been served have been stayed.
8	Rhode Island	1	No indication of service.
9	South Carolina	4	Cases stayed or time to respond extended. Motions to remand pending in two cases. ( <i>Glowack, Riney</i> ).
10	Tennessee Eastern	15	Consumer cases stayed
11	Tennessee Middle	3	Pending joint motion for consolidation and stay.
12	Tennessee Western	2	Cases stayed.
13	Texas Eastern	1	Cases stayed.
14	Texas Northern	3	Cases stayed.
15	Texas Southern	4	Cases stayed.
16	Texas Western	3	Cases stayed.
17	Utah	2	Only case served has been stayed.
18	Vermont	4	Cases served have been stayed.
19	Virginia Eastern	28	Cases consolidated. Interim lead counsel for plaintiffs appointed. Preservation of Evidence Order entered. Parties submitted proposed Notice of Electronic Discovery and ESI Protocol, but no agreement was reached as to on ESI protocol. Drafts of proposed protective order were submitted by class counsel and defendant on November 14, 2015. Time to respond to complaints extended.
20	Washington Western	2	Cases were consolidated. Motions for the appointment of lead counsel are pending. Plaintiffs did not otherwise oppose a stay and no answers have been served.
21	West Virginia Northern	1	Cases stayed.
22	West Virginia Southern	3	Cases stayed.
23	Wisconsin Western	3	Cases that have been served have been stayed. In one case ( <i>A to Z Auto</i> ), a stipulated order regarding evidence preservation was entered.